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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,415	11/07/2001	Mitchell D. Eggers	PW 083022 278802	9374

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PILLSBURY WINTHROP SHAW PITTMAN LLP
ATTENTION: DOCKETING DEPARTMENT
P.O BOX 10500
McLean, VA 22102

EXAMINER

HARRELL, ROBERT B

ART UNIT	PAPER NUMBER
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2142

MAIL DATE	DELIVERY MODE
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09/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/005,415

Applicant(s)

EGGERS, MITCHELL D.

Examiner

Robert B. Harrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20070713.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☒ Other: see attached Office Action.

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1. Claims 1-64 remain for examination.
2. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks TM, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for "the" and "said" within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
3. The non-statutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); In re Van Ornam, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993), In re Berg 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998), 195 F.3d 1322, 1326, 52 USPQ2d (Fed. Cir. 1999), Eli Lilly CAFC on petition for rehearing En Banc (58 USPQ2d 1869).
4. A timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321 (c) may be used to overcome an actual or provisional rejection based on a non statutory based double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 C.F.R. 3.73(b).
5. Claims 1-64 of this United States Application, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of United States Patent 7,142,987. Although the conflicting claims are not identical, they are not patentably distinct from each other because the United States Patent 7,142,987 claims encompasses the claims of this United States Application by the removal of a client over a network which this current United States Patent Application contains and is thus therein residing within the scope of United States Patent 7,142,987.
6. Claims 1-64 of this United States Application, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 and 58-69 of United States Patent Application 10/007,355. Although the conflicting claims are not identical, they are not patentably distinct from each other because the 10/007,355 application claims encompasses the claims of this United States Application by the removal of a client over a network which this current United States Patent Application contains and is thus therein residing within the scope of United States Patent 10/007,355 application claims.

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7. **Claims 1-64 of this United States Application, are rejected under the judicially created doctrine of obviousness-type double patenting** as being unpatentable over claims 1-64 and 86-117 of United States Patent Application 10/150,771. Although the conflicting claims are not identical, they are not patentably distinct from each other because the 10/150,771 application claims encompasses the claims of this United States Application by the removal of a client over a network which this current United States Patent Application contains and is thus therein residing within the scope of United States Patent 10/150,771 application claims.

8. **Claims 1-64 of this United States Application, are rejected under the judicially created doctrine of obviousness-type double patenting** as being unpatentable over claims 1, 2, 4-11, 13-16, 35-42, and 44-51 of United States Patent Application 10/252,352. Although the conflicting claims are not identical, they are not patentably distinct from each because the 10/252,352 application claims encompasses the claims of this United States Application by the removal of a client over a network which this current United States Patent Application contains and is thus therein residing within the scope of United States Patent 10/252,352 application claims.

9. The rejection, and grounds for rejection under the judicially created doctrine of obviousness-type double patenting as presented in examiner's prior Office Action, mailed 15 February 2006, and 28 August 2006 are each hereby maintained and incorporated in this Office Action by reference as indicated above. The only remarks, by the applicant in his 15 June 2006, on the above cited rejection was that the applicants (it is seen that there is only one applicant of record) note that claims are all rejected under judicially created doctrine of obviousness-type double patenting. The applicant[s] will file Terminal Disclaimers as appropriate upon indication that the claims include allowable matter. **However**, until such Terminal Disclaimers are filed, these rejections and grounds for rejections will continue and be incorporated by reference in this and any other subsequent Office Action either directly by those subsequent Office Action or by reference into those subsequent Office Action by this Office Action.

10. The following is a quotation of the second paragraph of 35 U.S.C 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. **Claims 1-64 are rejected under 35 U.S.C 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "the other discrete sample nodes"—claim 1;
- b) "the corresponding attachment point"—claim 1;
- c) "said each discrete sample node"—claim 14,
- d) "the configuration"—claim 27;
- e) "said each sample node"—claim 41;
- f) "said discrete sample nodes"—claim 46.

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12. As to 11 (a-g) above, these are but a few examples of numerous cases where clear antecedent basis are lacking and not an exhausting recital. Any other term(s) or phrase(s) overlooked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent basis also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent basis for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent basis are lacking can be viewed as non-responsive. Nonetheless, should a response yield all claims allowable short *a few* cases where clear antecedent basis are lacking within the claims, a preemptive authorization to enter an examiner's amendment to the record to correct such would accelerate a notice of allowance over a final rejection. Such could be added at the end of an applicant's response with the following statement: "Examiner is hereby authorized, without the need of further contact by examiner, to enter an Examiner's Amendment to correct any cases where antecedent basis are lacking." if the applicant so elects. This does not diminish the applicant's requirement to correct all such cases not so listed in the example few given above nor prohibit any amendments after a notice of allowance by the applicant.

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew T. Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (703) 872-9306.

16. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.


ROBERT B. HARRELL
PRIMARY EXAMINER
GROUP 2142